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CLERK US DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

BY ds DEPUTY

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

ALEX DIETMAR BOLIVAR
RODRIGUEZ-CAMPOVERDE,

Petitioner,

v.

ALBERTO GONZALES, Attorney
General, et al.,

Respondents.

CASE NO. 07-CV-1081 W (BLM)

ORDER DENYING
WRIT OF HABEAS
CORPUS

Petitioner Alex Dietmar Bolivar Rodriguez-Campoverde ("Petitioner"), proceeding pro se, brings this writ of habeas corpus pursuant to 28 U.S.C. § 2241 challenging his continued detention by Respondent Alberto Gonzales ("Respondent"). Respondent opposes. The Court decides the matter on the papers submitted and without oral argument. See Civil Local Rule 7.1(d)(1). For the following reasons, the Court **DENIES** Petitioner's habeas petition.

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1 **I. BACKGROUND**

2 Petitioner is a citizen of Ecuador. On November 27, 1979, Petitioner entered the
3 United States as an immigrant.

4 On August 22, 1989, Petitioner was convicted of violating California Health and
5 Safety Code § 11350(a) (possession of cocaine), and sentenced to sixteen months in
6 prison. After his release, on August 19, 2002, Petitioner was convicted of violating
7 California Penal Code § 314(1), indecent exposure with a prior conviction of California
8 Penal Code § 288(a) (committing any lewd or lascivious act upon or with the body of
9 a child under the age of 14). Petitioner was sentenced to four years in prison.

10 As a result of his convictions, on October 18, 2005, Immigration and Customs
11 Enforcement initiated removal proceedings against Petitioner. He was charged with
12 deportability under the following statutes: 8 U.S.C. § 1227(a)(2)(A)(ii) as an alien
13 convicted of two or more crimes involving moral turpitude not arising out of a single
14 scheme of criminal misconduct; 8 U.S.C. § 1227(a)(2)(A)(iii) as an alien convicted of
15 an aggravated felony; 8 U.S.C. § 1227(a)(2)(E)(I) as an alien convicted of a crime of
16 child abuse; and 8 U.S.C. § 1227(a)(2)(B)(I) as an alien convicted of a violation of a
17 controlled substance law or regulation. Based on his convictions, the Department of
18 Homeland Security held Petitioner under mandatory detention under 8 U.S.C. §
19 1226(c) pending removal proceedings.

20 On July 6, 2006, an Immigration Judge found Petitioner removable and denied
21 his request for relief from removal. (Gov.'s Return, Ex. B at p.7.¹) Petitioner appealed.
22 On October 19, 2006, the Board of Immigration Appeals ("BIA") upheld the IJ's
23 decision. (Id., Ex. C at p.2.)

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27 ¹The Court takes judicial notice of court records attached to the Government's Return, and
28 Notice of Supplemental Authority. Mullis v. United States Bank. Ct., 828 F.2d 1385, 1388 (9th Cir.
1987).

1 On November 8, 2006, Petitioner appealed the BIA's decision to the Ninth
2 Circuit. (Gov.'s Return, Ex. D at p.1.) Approximately two weeks later, Petitioner filed
3 a motion for a stay of deportation. (*Id.*, at p.4.)

4 On May 11, 2007, the Ninth Circuit denied Petitioner's motion for a stay of
5 deportation. (Gov.'s Return, Ex. D at p.5.) Then on August 27, 2007, the Ninth
6 Circuit dismissed Petitioner's appeal for lack of jurisdiction, and denied all "other
7 pending motions . . . as moot." (Notice of Supp. Authority, p.1.)

8 Meanwhile, on June 13, 2007, Petitioner commenced this habeas corpus
9 proceeding. Petitioner challenges his continued detention by Respondent.

10
11 **II. DISCUSSION**

12 Pursuant to federal law, certain categories of removable aliens, including those
13 who have criminal convictions mandating their removal, may be detained for longer
14 than the ninety-day statutory removal period. 8 U.S.C. §1231(a)(6). Continued
15 detention, however, is subject to due process limitations.

16 In Zadvydas v. Davis, 533 U.S. 678 (2001), the Supreme Court evaluated
17 whether post-removal detention under section 1231(a)(6) was limited to a reasonable
18 period or could be indefinite. Because a statute "permitting indefinite detention of an
19 alien would raise a serious constitutional problem," the Court held that post-removal
20 detention under section 1231(a)(6) is presumptively reasonable for 180 days. *Id.* at
21 690, 701. Thereafter, if the "alien provides good reason to believe that there is no
22 significant likelihood of removal in the reasonably foreseeable future, the Government
23 must respond with evidence sufficient to rebut that showing." *Id.* at 701.

24 Petitioner argues that his 22-month detention is unlawful. The Court is not
25 persuaded for two reasons.

26 First, although Petitioner has been in custody for 22 months, his post-removal
27 detention period has been far shorter. Petitioner's removal order did not become final
28 until October 19, 2006, when the BIA dismissed his appeal. On November 27, 2006,

1 the removal order was then stayed when Petitioner filed the motion for a stay of
2 deportation. See Ninth Circuit General Order 6.4(c)(1) ("Upon the filing of a motion
3 or request for stay of removal or deportation, the order of removal or deportation is
4 temporarily stayed until further order of the court."). Because the removal order did
5 not become effective until May 11, 2007 – when the Ninth Circuit denied the motion
6 to stay – Petitioner's 6-month post-removal period has not expired. Petitioner's
7 detention is, therefore, not unlawful.

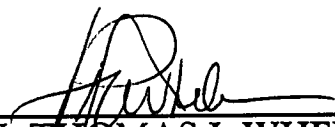
8 Second, under Zadvydas, in order to prevail in this proceeding, Petitioner would
9 have to "provide good reason to believe that there is no significant likelihood of
10 removal in the reasonably foreseeable future. . . ." Id. 533 U.S. at 701. Petitioner has
11 failed to satisfy this burden. Accordingly, for this additional reason, habeas relief is not
12 warranted.

13
14 **III. CONCLUSION AND ORDER**

15 In light of the foregoing, the Court **DENIES** Petitioner's § 2241 writ of habeas
16 corpus. (Doc. No. 1). The Clerk of the Court shall close the district court file.

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18 **IT IS SO ORDERED.**

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20 **DATE: October 3, 2007**

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23 **HON. THOMAS J. WHELAN**
24 United States District Court
25 Southern District of California
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